

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6843 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -

JJJ

3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution

of India, 1950 of any Order made thereunder? -

5. Whether it is to be circulated to the Civil Judge?

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DAYABHAI MANIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR DC RAWAL FOR MR ANAND for Petitioners

MR BY MANKAD AGP for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 08/02/99

ORAL JUDGEMENT

By means of this petition, the petitioners sought for quashing and setting aside the order dated 24-2-86 passed by the Collector, Gandhinagar in CB-TNS-S.Plot AUCN-VASI-3941, office of the Collector, Gandhinagar and the order dated 16-4-1988 of the Additional Chief Secretary, Revenue Department (Appeals), Gujarat State, Ahmedabad passed in SRD/ JMN/359/86 dated 16-4-1998 as well as the order dated 28-4-1988 of the Additional Chief Secretary, Revenue Department (Appeals). Gujarat State, Ahmedabad in passed in SRD/JMN/361/86

2. The plot no. 374/1 admeasuring 228-30 sq. mtr. and plot No. 375-A-1 admeasuring 200 sq. mtr. situated in Sector - 28 at Gandhinagar city were put up for auction sale by the Auction Officer, Collector (Encroachments), Gandhinagar on 10-12-1985 pursuant to the Notification under the provisions of Section 166 of the Bombay Land Revenue Code, published on 20-8-1985. The petitioner no. 1 is the highest bidder of the plot no. 375-A-1. While the petitioners no. 2 and 3 are the highest bidders for plot no. 374/1. The petitioners deposited 25% of the higher bid. The Collector, while exercising the power u/s 179 of the Bombay Land Revenue Code, cancelled the public auction and directed to refund the amount deposited by the petitioners and ordered for reauction of the said plots and to sell the same. The appellants petitioners also filed appeals before the respondent no. 3. The respondent no. 3 dismissed the appeal of the petitioners and confirmed the orders of the District Collector, Gandhinagar.

3. The learned counsel for the petitioner contended

that in the present case neither a show cause notice has been issued to the petitioners nor any opportunity of being heard has been given to the petitioners before cancelling the auction sale made in favour of the petitioners. Hence, the orders of the authorities below are illegal and against the principle of natural justice. Learned counsel for the petitioners relied on the decision of this Court delivered in Special Civil Application No. 3594 of 1997 on 10-7-1997 in support of his contention, wherein the matter was remanded back to the authority concerned for a decision afresh after giving opportunity of hearing to the petitioners.

4. In the aforesaid decision, this Court set aside the orders of the Collector and the Government and remanded the case to the Collector for affording opportunity of hearing and to decide the case afresh. I am in agreement with the above decision.

5. In view of the statements of the learned counsel for the parties that no show cause notice has been issued nor any opportunity of being heard to the petitioners was given before cancelling the auction sale made in favour of the petitioners, this petition is allowed and the impugned order dated 24-2-86 passed by the Collector, Gandhinagar in CB-TNS-S.Plot AUCN-VASI-3941, office of the Collector, Gandhinagar and the order dated 16-4-1988 of the Additional Chief Secretary, Revenue Department (Appeals), Gujarat State, Ahmedabad passed in SRD/JMN/359/86 dated 16-4-1998 as well as the order dated 28-4-1988 of the Additional Chief Secretary, Revenue Department (Appeals). Gujarat State, Ahmedabad in passed in SRD/JMN/361/86 are quashed and set aside and the matter is remanded back to the Collector, Gandhinagar to decide afresh after affording reasonable opportunity of hearing to the petitioners, as far as possible within three months from the date of presentation of a certified copy of this order.

6. Learned Counsel for the petitioners pointed out that the petitioners have already deposited 25% of the auction sale price and that is lying with the Collector, Gandhinagar. The Collector, Gandhinagar will take into consideration this fact at the time of hearing and deciding the matter in dispute. Further auction of the aforesaid two plots situated in Sector - 28 at Gandhinagar which are the subject matter of this case shall remain stayed till the decision is taken by the Collector, Gandhinagar and the petitioners are directed to cooperate in the proceedings for early disposal of the matter.

7. Rule is made absolute to the aforesaid extent,
with no order as to costs.

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/JVSatwara/